TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 325.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

THOMAS SOLDANA AND FRANCISCO HERRERA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MONTANA.

FILED NOVEMBER 24, 1916.

SUPREME COURT OF THE UNITED STATES.

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1 *Names and addresses of attorneys of record.*

Hon. T. W. Gregory, Attorney General of the United States, of Washington, D. C.; Hon. B. K. Wheeler, United States attorney for the district of Montana, of Butte, Montana, attorneys for plaintiff and plaintiff in error.

Hon. W. D. Kyle, of Butte, Montana, attorney for defendants and defendants in error.

2 In the District Court of the United States in and for the District of Montana.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THOMAS SOLDANA AND FRANCISCO HERRERA, DEFENDANTS. } No. 526.

Be it remembered, that on the 26th day of October, A. D. 1916, an indictment against the above-named defendants was duly presented and filed herein, being in the words and figures following, to wit:

3 UNITED STATES OF AMERICA,
District of Montana, ss.

In the District Court of the United States, within and for the district of Montana, of the September term of said district court, held at Butte, Silver Bow County, in said district of Montana, in the year of our Lord one thousand nine hundred and sixteen.

The grand jurors of the United States of America, duly impaneled, sworn and charged to inquire within and for the district of Montana, and true presentment make of all crimes and misdemeanors committed against the laws of the United States, within the State and district of Montana, upon their oaths and affirmations, do find, charge, and present:

That one Thomas Soldana and one Francisco Herrera, whose true names are to the grand jurors aforesaid unknown, late of the State and district of Montana, on the 17th day of June, A. D. 1916, at and within the State and district of Montana, did then and there wrongfully, unlawfully, and feloniously introduce a large quantity of spirituous and intoxicating liquor, commonly called whiskey, in quantity about three quarts, and malt and intoxicating liquor, commonly called beer, in quantity about nine quarts, the exact quantity of which said whiskey and beer being to the grand jurors aforesaid unknown, into a certain place situated wholly upon and within the exterior boundaries of the Crow Indian Reservation, in the State and district of Montana, to wit, the station platform of the Chicago, Burlington and Quincy Railway Company, at the town of Crow Agency, in the State and district of Montana, which said station platform is situate upon the right of way of the Chicago, Burlington and Quincy Railway Company, as said right of way passes over, through, and across the said Crow Indian Reservation, and said right of way being the same right of way for railroad

purposes heretofore acquired of the United States of America and the Crow Tribe of Indians by the said Chicago, Burlington and
4 Quincy Railway Company, the said Crow Indian Reservation then and there being an Indian country under the charge of Evan W. Estep, then and there the superintendent and special disbursing agent in charge of the said Crow Indian Reservation and the Indians thereon; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

B. K. WHEELER,
United States Attorney, District of Montana.

5 (Indorsed:) No. 526. United States District Court, district of Montana. United States of America v. Thomas Soldana and Francisco Herrera. Indictment, a true bill. C. S. Shoemaker, foreman of grand jury. B. K. Wheeler, United States attorney, district of Montana. Witnesses: Charles Wilson, H. M. Loukes, Everett Keeler, Edward Turner, Evan W. Estep. Presented by the grand jury in open court by their foreman, in their presence, and filed this 26th day of October, A. D. 1916. Geo. W. Sproule, clerk.

6 Thereafter, on October 27, 1916, defendants were duly arraigned herein, the minute entry thereof being as follows, to wit:

In the District Court of the United States, for the District of Montana. No. 526. United States vs. Thomas Soldana and Francisco Herrera.

Defendants present in court and being arraigned answered that their true names were Thomas Soldana and Francisco Herrera. Thereupon indictment read to defendants and thereupon it is ordered that W. D. Kyle, Esq., be and he hereby is appointed attorney for defendants and that said cause be continued until 10 a. m. Monday, October 30, 1916, in which to plead.

In open court:

GEO. W. SPROULE, *Clerk.*

Attest: A true copy of minutes, October 27, 1916.
GEO. W. SPROULE, *Clerk.*
By HARRY H. WALKER, *Deputy Clerk.*

7 Thereafter, on October 30, 1916, demurrer to indictment was duly filed herein, in the words and figures following, to wit:

8 United States District Court, District of Montana.

UNITED STATES OF AMERICA
vs.
THOMAS SOLDANA AND FRANCISCO HERRERA.

Demurrer to indictment.

Come now Thomas Soldana and Francisco Herrera and demur to the indictment presented and filed against them herein on the ground

that the facts stated in said indictment do not constitute a public offense.

W. D. KYLE,
Attorney for Defendants.

Filed Oct. 30, 1916.
GEO. W. SPROULE, *Clerk.*

9 Thereafter, on Oct. 30, 1916, the opinion and decision of the court was duly filed herein, as follows, to wit:

U. S. District Court, District of Montana.

U. S.
vs.
SOLDANS ET AL.

Herein, upon demurrer to the indictment, it being admitted for the purposes hereof that this case is mutatis mutandis that of U. S. vs. Lindhal, 221 Fed., 143, the demurrer is sustained and defendants discharged.

BOURQUIN, J.

Endorsed: Title of court and cause. Memo. Filed Oct. 30, 1916.
GEO. W. SPROULE, *Clerk.*

10 Thereafter, on October 30, 1916, the order and judgment of the court was duly entered herein, in the words and figures following, to wit:

In the District Court of the United States for the District of Montana. No. 526, United States vs. Thomas Soldana and Francisco Herrera.

This cause came on regularly at this time to plead herein; thereupon W. D. Kyle, Esq., attorney for defendants herein, filed demurrer to indictment, and thereupon demurrer submitted; and thereupon the court rendered the following order, viz:

"Herein, upon demurrer to the indictment, it being admitted for the purposes hereof that this case is mutatis mutandis that of U. S. vs. Lindhal, 221 Fed., 143, the demurrer is sustained and defendants discharged."

Entered in open court October 30, 1916.

GEO. W. SPROULE, *Clerk.*

UNITED STATES OF AMERICA,
District of Montana. ss.

I, Geo. W. Sproule, clerk of the United States District Court for the District of Montana, do hereby certify that the foregoing papers hereto annexed constitute the judgment roll in the above-entitled action.

Witness my hand and the seal of said court at Butte, Montana, this 30th day of October, A. D. 1916.

[SEAL]

GEO. W. SPROULE, *Clerk.*

(Indorsed) Title of court and cause. Judgment roll. Filed and entered Oct. 30, 1916. Geo. W. Sproule, clerk.

11 Thereafter, on Nov. 4, 1916, petition for writ of error was filed herein, in the words and figures following, to wit:

In the District Court of the United States, for the District of Montana.

UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,
vs.
THOMAS SOLDANA AND FRANCISCO HERRERA, DEFENDANTS IN ERROR.

Petition for writ of error.

Now comes the United States of America, plaintiff herein, and says:

That on or about the 30th day of October, 1916, the District Court of the United States for the District of Montana rendered and entered a decision sustaining the defendants' demurrer to the indictment herein, in and by which decision, and the proceedings had prior thereto in this cause, certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore, this plaintiff prays that a writ of error may issue in this behalf out of the Supreme Court of the United States for the correction of the errors complained of and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

B. K. WHEELER,
United States Attorney,
District of Montana,
Attorney for Plaintiff.

Filed Nov. 4, 1916.

GEO. W. SPROULE, *Clerk.*
By HARRY H. WALKER, *Deputy.*

12 Thereafter, on Nov. 4, 1916, an assignment of errors was duly filed herein, in the words and figures following, to wit:

In the District Court of the United States, for the District of Montana.

UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,
vs.
THOMAS SOLDANA and FRANCISCO HERRERA, DEFENDANTS IN ERROR.

Assignment of errors.

The plaintiff in this action, in connection with its petition for writ of error, makes the following assignment of errors, which it avers exists:

First. The court erred in sustaining the defendants' demurrer to the indictment.

Second. The court erred in holding that the indictment does not state facts sufficient to constitute an offense against the laws of the United States.

Third. The court erred in holding that the provisions of section 2139 Revised Statutes of the United States, prohibiting the introduction of intoxicating liquors into the Indian country, do not apply to the lands embraced within that portion of the railroad right of way of the Chicago, Burlington and Quincy Railroad Company which traverses the Crow Indian Reservation in the State of Montana.

Fourth. The court erred in holding that the lands embraced within that portion of the railroad right of way of the Chicago, Burlington and Quincy Railroad Company which traverses the Crow Indian Reservation, in the State of Montana, is not Indian country.

Fifth. The court erred in holding that the Indian title to the lands embraced within that portion of the railroad right of way of the Chicago, Burlington and Quincy Railroad Company which tra-
13 verses the Crow Indian Reservation, in the State of Montana, has been extinguished.

Sixth. The court erred in holding that the act of Congress of the United States, approved March 2nd, 1899, (30 Stat. L. 990), extinguished the Indian title to the lands embraced within that portion of the railroad right of way of the Chicago, Burlington and Quincy Railroad Company which traverses the Crow Indian Reservation in the State of Montana.

Wherefore the plaintiff prays that the said decision and order sustaining the defendants' demurrer to the indictment be reversed.

B. K. WHEELER,
United States Attorney, District of Montana,
Attorney for Plaintiff.

Filed Nov. 4, 1916.
GEO. W. SPROULE, *Clerk.*
By HARRY H. WALKER, *Deputy.*

14 Thereafter, on Nov. 4, 1916, an order allowing writ of error was duly entered herein, in the words and figures following, to wit:

In the District Court of the United States for the District of Montana.

UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

THOMAS SOLDANA AND FRANCISCO HERRERA, DEFENDANTS IN ERROR.

Order allowing writ of error.

This 4th day of November, 1916, comes the plaintiff, United States of America, by its attorney, and files herein and presents to the

court its petition praying for the allowance of a writ of error, and an assignment of errors intended to be urged by it, praying also that a transcript of the record and proceedings and papers upon which the decision herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as are proper in the premises.

In consideration whereof the court does hereby allow the writ of error this 4th day of November, 1916.

BOURQUIN, *District Judge.*

Filed and entered Nov. 4, 1916.

GEO. W. SPROULE, *Clerk.*
By HARRY H. WALKER, *Deputy.*

15 Thereafter, on November 4, 1916, a writ of error was duly issued herein, which said original writ of error is hereto attached and is in the words and figures following, to wit:

16 *Writ of error.*

THE UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the Judge of the District Court of the United States for the District of Montana, greeting:

Because of the record and proceedings, and also in the rendition of the decision sustaining a demurrer to an indictment, which is in said district court before you, between the United States of America and Thomas Soldana and Francisco Herrera, a manifest error has happened, to the great damage of the said United States of America, as by its complaint appears. We, being willing that the error, if any has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, to command you that under your hand and seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the City of Washington on the 18th day of December, 1916, in the Supreme Court, then and there to be held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, the 4th day of November, in the year of our Lord one thousand nine hundred and sixteen.

GEO. W. SPROULE,
Clerk of the District Court of the United States for the District of Montana.

Allowed by
GEO. M. BOURQUIN, *District Judge.*

17 *Answer of court to writ of error.*

The answer of the honorable the district judge of the United States for the District of Montana to the foregoing writ:

The record and proceedings whereof mention is made, with all things touching the same, I certify under the seal of said district court to the honorable the Supreme Court of the United States, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed, as within I am commanded.

By the court.

[SEAL.] GEO. W. SPROULE, *Clerk.*
By HARRY H. WALKER, *Deputy Clerk.*

18 (Indorsed:) No. 526. United States District Court, District of Montana. United States of America, plaintiff, vs. Thomas Soldana and Francisco Herrera, defendant. Writ of error. Filed November 16, 1916. Geo. W. Sproule, clerk, by Harry H. Walker, deputy.

19 Thereafter, on November 4th, 1916, a citation was duly issued herein, which said original citation is hereto attached and is in the words and figures following, to wit:

20 *Citation on writ of error.*

UNITED STATES OF AMERICA, *ss.*

To Thomas Soldana and Francisco Herrera, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, on the 18th day of December, 1916, pursuant to a writ of error, filed in the clerk's office of the District Court of the United States for the District of Montana, wherein the United States of America is plaintiff in error and you are defendants in error, to show cause, if any there be, why the decision and order of the District Court of the United States for the District of Montana, sustaining the demurrer to the indictment, as in said writ of error mentioned, should not be reversed and corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Geo. M. Bourquin, judge of the District Court of the United States for the District of Montana, this 4th day of November, in the year of our Lord one thousand nine hundred and sixteen.

BOURQUIN,
Judge of the District Court of the United States for the District of Montana.

Service of the within and foregoing citation accepted and receipt of copy thereof acknowledged this 16th day of November, 1916.

W. D. KYLE,
Solicitor for Defendants in Error.

21 (Indorsed:) No. 526. United States District Court, District of Montana. United States of America, Plaintiff, vs. Thomas Soldana and Francisco Herrera, Defendants. Citation on writ of error. Filed November 16, 1916. Geo. W. Sproule, Clerk, by Harry H. Walker, Deputy.

22 Thereafter, on Nov. 16, 1916, a præcipe for transcript of record was duly filed herein, in the words and figures following, to-wit:

In the District Court of the United States in and for the District of Montana.

UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

THOMAS SOLDANA and FRANCISCO HERRERA, DEFENDANTS IN ERROR.

Præcipe for transcript of record.

To Thomas Soldana and Francisco Herrera, defendants in error, and to W. D. Kyle, their solicitor:

The undersigned, solicitor for the plaintiff in error herein, files and serves upon you its præcipe, in conformity with the rules of court, indicating the portions of the record in the above entitled cause to be incorporated into the transcript of record herein, and which said portions of said record you are hereby notified the said plaintiff in error will incorporate and include in the record herein:

Said portions are as follows:

1. The indictment.
2. The demurrer to the indictment.
3. The order of the court sustaining the demurrer to the indictment.
4. The opinion and decision of the court rendered and filed October 30th, 1916, ordering that the demurrer to the indictment be sustained.
5. The petition for writ of error.
6. The assignment of errors accompanying the petition for writ of error.
7. The order of the court allowing the writ of error.
8. The writ of error.
9. The citation on writ of error with admission of service by defendants in error.
10. This præcipe.

B. K. WHEELER,
United States Attorney for the District of Montana,
Solicitor for plaintiff in error.

23 Service of the within and foregoing præcipe for transcript of record accepted and receipt of copy thereof acknowledged this 16th day of November, 1916.

W. D. KYLE,
Solicitor for Defendants in Error.

Filed Nov. 16, 1916.
GEO. W. SPROULE, *Clerk.*
By HARRY H. WALKER, *Deputy.*

24 *Certificate of clerk to transcript of record.*

UNITED STATES OF AMERICA, *District of Montana,* } *ss.*

I, Geo. W. Sproule, clerk of the United States District Court for the District of Montana, do hereby certify and return to the honorable the Supreme Court of the United States, that the foregoing volume, consisting of 23 pages, numbered consecutively from 1 to 23, inclusive, is a true and correct transcript of the pleadings, orders, decision, and judgment, and all other proceedings in said cause required to be incorporated in the record on appeal therein by the præcipe of the plaintiff in error for said record on appeal, including said præcipe, and of the whole thereof, as appears from the original records and files of said court in my possession as such clerk; and I do further certify and return that I have annexed to said transcript and included within said pages the original writ of error and citation issued in said cause.

I further certify that the costs of the transcript of record amount to the sum of five and 60/100 dollars and have been made a charge against the plaintiff in error.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Butte, Montana, this 18th day of November, A. D. 1916.

GEO. W. SPROULE, *Clerk.*

[SEAL.] By HARRY H. WALKER, *Deputy Clerk.*

(Indorsement on cover:) File No. 25618. Montana D. C. U. S. Term No. 325. The United States, Plaintiff in Error, vs. Thomas Soldana and Francisco Herrera. Filed November 24th, 1916. File No. 25618.

○

In the Supreme Court of the United States.

OCTOBER TERM, 1917.

THE UNITED STATES, PLAINTIFF IN Error,
v.
THOMAS SOLDANA AND FRANCISCO Herrera.
No. 325.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MONTANA.

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General and in accordance with the provisions of the Criminal Appeals Act, 34 Stat. 1246, moves the court to advance the above-entitled cause for hearing on a day convenient to the court.

Defendants in error were indicted in the District Court of the United States for the District of Montana for introducing intoxicating liquors into the Indian country, to wit, the station of the Chicago, Burlington & Quincy Railway Company, situated upon the right of way of that company at Crow Agency, Montana, within the exterior boundaries of the Crow Indian

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Reservation, which right of way was procured by said railway company from the United States and the Crow Tribe of Indians and passes over, through and across the said reservation. The indictment was under section 2139 of the Revised Statutes.

A demurrer to the indictment was sustained, the district court following the case of *United States* v. *Lindahl*, 221 Fed. 143, and holding in effect that a railroad right of way over an Indian reservation, acquired pursuant to an act of Congress, is not "Indian country" within the meaning of the law prohibiting the introduction of intoxicating liquors into that country.

Opposing counsel concur.

JOHN W. DAVIS,
Solicitor General.

DECEMBER, 1917.

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In the Supreme Court of the United States.

OCTOBER TERM, 1917.

THE UNITED STATES
v.
THOMAS SOLDANA AND FRANCISCO HERRERA.
No. 325.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MONTANA.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

This is a writ of error to the District Court of the United States for the District of Montana brought under the Criminal Appeals Act of March 2, 1907, c. 2564 (34 Stat. 1246), to review the decision on demurrer to the indictment for unlawfully introducing intoxicating liquor on the station platform at the town of Crow Agency in the State of Montana, situated upon the right of way of the Chicago, Burlington and Quincy Railroad Company. The right of way at the point where

the liquor was introduced is within the exterior boundaries of the Crow Indian Reservation. (R. 1.) The demurrer was on the ground that the facts stated in the indictment did not constitute a public offense, and was sustained by the District Court. (R. 2 and 3.)

Statutes construed by the lower court.

To arrive at its conclusion that the point where the liquor was introduced was not Indian country, the court must have construed Revised Statutes, Section 2139, relative to the introduction of liquor into the Indian country, as well as the statute under which the railroad in question was granted its right of way.

In the Sixth assignment of error the United States Attorney mentions the Act of March 2, 1899, c. 374 (30 Stat. 990), as the statute which the court held extinguished the Indians' title to the lands embraced within the railroad right of way. This citation was probably a mistake, as the Act cited is a general Act "To provide for the acquiring of rights of way by railroad companies through Indian reservations, Indian lands, and Indian allotments, and for other purposes," whereas the specific statute under which the right of way in question was acquired was evidently the Act of February 12, 1889, c. 134 (25 Stat. 660).

The erroneous citation by the United States Attorney cannot, however, prejudice the Government since none of the statutes referred to form

a part of the indictment. *United States* v. *Nixon* (1914), 235 U. S. 231.

Revised Statutes, Section 2139, as amended by Act of February 27, 1877, c. 69 (19 Stat. 244), and the Act of July 23, 1892, c. 234 (27 Stat. 260), reads as follows:

> No ardent spirits, ale, beer, wine, or intoxicating liquor or liquors of whatever kind shall be introduced, under any pretense, into the Indian country. Every person who sells, exchanges, gives, barters, or disposes of any ardent spirits, ale, beer, wine, or intoxicating liquors of any kind to any Indian under charge of any Indian Superintendent or agent, or introduces or attempts to introduce any ardent spirits, ale, wine, beer, or intoxicating liquor of any kind into the Indian country shall be punished by imprisonment for not more than two years, and by a fine of not more than three hundred dollars for each offense. But it shall be sufficient defense to any charge of introducing or attempting to introduce ardent spirits, ale, beer, wine, or intoxicating liquors into the Indian country that the acts charged were done under authority in writing from the War Department, or any officer duly authorized thereunto by the War Department. All complaints for the arrest of any person or persons made for violation of any of the provisions of this act shall be made in the county where the offense shall have been committed, or if committed upon or within

> any reservation not included in any county, then in any county adjoining such reservation, and, if in the Indian Territory, before the United States court commissioner, or commissioner of the circuit court of the United States residing nearest the place where the offense was committed, who is not for any reason disqualified; but in all cases such arrests shall be made before any United States court commissioner residing in such adjoining county, or before any magistrate or judicial officer authorized by the laws of the State in which such reservation is located to issue warrants for the arrest and examination of offenders by section ten hundred and fourteen of the Revised Statutes of the United States. And all persons so arrested shall, unless discharged upon examination, be held to answer and stand trial before the court of the United States having jurisdiction of the offense.

The Act of February 12, 1889, c. 134 (25 Stat. 660), is considered in detail in this brief, *infra,* pages 8, 9, 10, and 12.

ASSIGNMENT OF ERRORS.

Among the assignment of errors are:

First. The court erred in sustaining the defendants' demurrer to the indictment. (R. 4.)

Third. The court erred in holding that the provisions of Section 2139, Revised Statutes of the United States, prohibiting the introduction of

intoxicating liquors into the Indian country, do not apply to the lands embraced within that portion of the railroad right of way of the Chicago, Burlington and Quincy Railroad Company which traverses the Crow Indian Reservation in the State of Montana. (R. 5.)

Fourth. The court erred in holding that the lands embraced within that portion of the railroad right of way of the Chicago, Burlington and Quincy Railroad which traverses the Crow Indian Reservation in the State of Montana, is not Indian country. (R. 5.)

ARGUMENT.

I.

The court below based its decision on Clairmont v. United States, 225 U. S. 551. That case, however, involved a statute essentially different from the statute in the case at bar.

The court below relied on the case of *United States* v. *Lindahl* (1915), 221 Fed. 143, where the same Judge sustained a demurrer on a similar indictment. The decision in the latter case, while involving a right of way granted under a different statute from that in the instant case, was based solely upon *Clairmont* v. *United States* (1912), 225 U. S. 551.

At the outset it is to be noted that the *Clairmont case* presented a very special set of facts which is not likely to be duplicated in other cases. In the first place, in that case the Indians had

by express agreement surrendered and relinquished to the United States " all the right, title and interest which they now have under and by virtue of the aforesaid treaty of July sixteenth, eighteen hundred and fifty-five "; and it was admitted by the Government and held by this Court that " by the grant of Congress the railroad company obtained the fee in the land constituting the ' right of way ' * * *. The Indian title or right of occupancy was extinguished, without reservation * * * the right of way had been completely withdrawn from the reservation by the surrender of the Indian title * * * " (pp. 556, 560).

In the second place, the facts in the Clairmont case disclosed no evidence whatever that Congress intended to retain for the benefit of the Indians the protection of the Federal laws in the ceded territories. Under such circumstances, this Court held that the land had ceased to be Indian country, and that the Federal statute was not operative therein.

The case at bar, on the other hand, presents the exact opposite of these features of the *Clairmont case*. In the case at bar, the railroad company obtained not an absolute fee but an easement of right of way (at the most a limited fee), which by specific statutory provision was made subject to regulation for the benefit of the Indians and was defeasible on certain specific conditions; and the statute itself plainly disclosed Congressional

intent to retain Federal protection of the Indians in the granted right of way. The facts and the statute, therefore, are clearly distinguishable from those which were before this Court in the *Clairmont case.*

The right of way in question was obtained by the railroad company through the following statutes and Executive Orders:

By Executive Order of July 5, 1873, it was ordered:

> It is hereby ordered that the tract of country above described be withheld from entry and settlement as public lands, and that the same be set apart as a reservation for the Gros Ventre, Piegan, Blood, Blackfeet, River Crow, and other Indians, as recommended by the Secretary of the Interior and Commissioner of Indian Affairs. (Executive Orders relating to Indian Reservations.)

By the Act of April 15, 1874, c. 96 (18 Stat. 28), a reservation was set apart for the use and occupation of the Gros Ventre, Piegan, Blood, Blackfeet, River Crow, and such other Indians as the President may from time to time see fit to locate thereon.

By Executive Order of August 19, 1874, it was ordered:

> That all that tract of country in Montana Territory set apart by Executive Order dated July 5, 1873, and not embraced within the tract set apart by act of Congress ap-

> proved April 15, 1874, for the use and occupation of the Gros Ventre, Piegan, Blood, Blackfeet, River Crow, and other Indians, comprised within the following boundaries.

Following this the boundaries were set forth.

By Executive Order of April 13, 1875, a certain tract was added to the reserve for those Indians; and by Executive Order of July 13, 1880, a portion of the tract was relinquished and restored to the public domain.

The Act of May 1, 1888, c. 213, Article I (25 Stat. 113) referring to the River Crow Indians of Montana (the Crow Indians now), provides that " the various tribes or bands of said Indians shall be upon the separate reservations hereinafter described and set apart." By Article II, the Indians ceded to the United States all title, etc., reserving to themselves only the reservations set apart for their separate use and occupation.

By Article VIII it was provided that whenever, in the opinion of the President, public interests require the construction of railroads through any portion of the reservations, the "*right of way shall be, and is hereby, granted for such purposes, under such rules, regulations, limitations, and restrictions as the Secretary of the Interior may prescribe;* the compensation to be fixed by said Secretary and by him expended for the benefit of the Indians concerned."

By the Act of February 12, 1889, c. 134 (25 Stat. 660), a right of way was granted to the Big

Horn Southern Railroad Company through the Crow Indian Reservation. Section 1 provided:

> That a right of way is hereby granted, as hereinafter set forth, to the Big Horn Southern Railroad Company, a corporation duly organized and existing under the laws of the Territory of Montana, for the construction, operation, and maintenance of its railroad, telegraph, and telephone line through the lands set apart for the use of the Crow Indians and commonly known as the Crow Indian Reservation, * * *.

By Section 3 of this Act it was provided that the Secretary of the Interior should fix the "compensation to be paid the Indians *for such right of way* * * * and also to ascertain and fix the amount of compensation to be made individual members of the tribe for damages sustained by them by reason of the construction of said road."

And it was also provided that—

> *the surveys, construction, and operation of such railroad shall be conducted with due regard for the rights of the Indians and in accordance with such rules and regulations as the Secretary of the Interior may make to carry out this provision: Provided,* That the President of the United States may, in his discretion, require that the consent of the Indians to said right of way shall be obtained by said railroad company, in such manner as he may prescribe, before any right under this act shall accrue to said company.

Section 4 provided as follows:

> That said company shall not assign or transfer or mortgage this right of way for any purpose whatever until said road shall be completed through that part of said reservation through which it shall be constructed: *Provided,* That the company may mortgage said franchise, together with the rolling stock, for money to construct and complete said road: *And provided further,* That the right granted herein shall be lost and forfeited by said company unless the road is constructed and in running order through said reservation on said line within two years from the passage of this act, or if the consent of the Indians is required under the terms of the proviso to section three of this act, then within two years from the date when such consent shall be obtained as provided in section three of this act.

Section 5 provided as follows:

> That the said railroad company shall accept this right of way *upon the expressed condition,* binding upon itself, its successors and assigns, *that they will neither aid, advise, nor assist in any effort looking towards the changing or extinguishing the present tenure of the Indians in their land, and will not attempt to secure from the Indian tribes any further grant of land or its occupancy than is hereinbefore provided: Provided, That any violation of the condition mentioned in this section shall operate as a forfeiture of all the rights and privi-*

leges of said railroad company under this act.

By the Act of March 1, 1893, c. 192 (27 Stat. 529), extending the time for the construction of the Big Horn Southern Railroad through the Crow Indian Reservation, it was provided: "That in order to facilitate the construction of said road the said railway company may transfer the said right of way, subject to the approval of the Secretary of the Interior, to another railroad company in the State of Montana."

Under the above Act of March 1, 1893, the right of way in question was conveyed by the Big Horn Southern Railroad Company to the Chicago, Burlington and Quincy Railroad Company by deed dated December 1, 1897, recorded May 9, 1898, in Custer County, Montana, in "Book J. Deeds" on pages 490, 496; and the Secretary of the Interior in letter of November 11, 1901, to the Commissioner of the General Land Office, on public files, said:

> The papers are accordingly hereby accepted and the company is recognized as successor to the Big Horn Southern Railroad Company.

The difference between the statute here in question and that by which the Northern Pacific Railroad obtained its grant, Act of July 2, 1864, c. 217 (13 Stat. 365), involved in the *Clairmont case*, is very marked.

The Act of July 2, 1864, was entitled: "An Act *granting lands* to aid in the construction of a railroad and telegraph line from Lake Superior to Puget's Sound, on the Pacific Coast, by the Northern Route.

The Act of February 12, 1889, was entitled: "An Act granting to the Big Horn Southern Railroad Company *a right of way* through a part of the Crow Indian Reservation in Montana Territory."

The first Act provided (Section 1):

> Said corporation is hereby authorized and empowered to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph line, with the appurtenances, namely, beginning at a point on Lake Superior, in the State of Minnesota or Wisconsin; thence westerly by the most eligible railroad route, as shall be determined by said company, within the territory of the United States, on a line north of the forty-fifth degree of latitude to some point on Puget's Sound * * * and is hereby vested with all the powers, privileges, and immunities necessary to carry into effect the purposes of this act as herein set forth.

Section 2 provided:

> That the right of way through the public lands be, and the same is hereby, granted to said "Northern Pacific Railroad Company," its successors and assigns, for the construction of a railroad and telegraph as proposed; and the right, power, and authority

is hereby given to said corporation to take from the public lands, adjacent to the line of said road, material of earth, stone, timber, and so forth, for the construction thereof. Said way is granted to said railroad to the extent of two hundred feet in width on each side of said railroad where it may pass through the public domain, including all necessary ground for station buildings, workshops, depots, machine shops, switches, side tracks, turn-tables, and water-stations; and the right of way shall be exempt from taxation within the territories of the United States. *The United States shall extinguish, as rapidly as may be consistent with public policy and the welfare of the said Indians, the Indian titles to all lands falling under the operation of this act, and acquired in the donation to the* [*road*] *named in this bill.*

The second Act simply grants a right of way to the Big Horn Southern Railroad Company from a point on the Northern Pacific Railroad through the Crow Indian Reservation and to and across its southern boundary line—nothing being stated or provided relative to the remainder of the railroad.

The first Act granted to the Northern Pacific Railroad alternate sections of the public land in fee.

The second Act contains no such provision.

The first Act contains no provision that its operation shall be "conducted with due regard for the rights of the Indians and in accordance with such rules and regulations as the Secretary of the Interior may make to carry out this provision."

The second Act expressly subjects the operation of the railroad to such conditions—conditions which seem clearly incompatible with the theory that the railroad obtained a fee and that the Indian title was forever extinguished, for the rules and regulations of the Secretary of the Interior were undoubtedly to be imposed for the benefit and protection of his wards—the Indians.

The first Act contained no condition of forfeiture in case the railroad "aid, advise, or assist in any effort looking towards the changing or extinguishing the present tenure of the Indians in their land." On the contrary, it contained a specific provision that "The United States shall extinguish as rapidly as may be consistent with public policy and the welfare of the said Indians, the Indian titles to all lands falling under the operation of this Act and acquired in the donation to the road named in this bill."

The second Act contained such a condition of forfeiture as is above set forth, and on the contrary did not contain the provision as to extinguishing of Indian titles.

The Government contends that for the following reasons the statute now in question did not

extinguish the Indian title to the lands included in the right of way across the Crow Indian Reservation:

(a) The statute did not in fact or law extinguish wholly the Indian title or convey a fee. It conveyed only an easement of right of way, or at most, a limited fee.

(b) The statute contains provisions for the operation of the right of way "with due regard for the rights of the Indians," and subject to rules and regulations of the Secretary of the Interior. Such provisions show that it was not the intent of Congress to extinguish completely the Indian title so as to remove from the Indians all protection of the Federal liquor laws.

(c) The statute contains provisions for forfeiture of the right of way under such conditions as plainly show that the Indians shall retain the right of reverter or that the land shall revert to the United States for the benefit of the Indians. This negatives the idea that the Indian title has been completely extinguished within the meaning of the decision in the Clairmont Case.

II.

The statute did not in fact or in law extinguish wholly the Indian title or convey a fee. It conveyed only an easement of right of way, or at most a limited fee.

In *East Alabama Railway Co.* v. *Doe* (1885), 114 U. S. 340, 350, the Court, in considering the

interest acquired by a railroad company in a right of way under a deed, said:

> The habendum was, to have and to hold the same to the company, its successors and assigns, to its "own proper use, benefit and behoof forever, in fee simple."

The Court, in construing this, said:

> The right granted was merely a right of way for a railroad. It was granted to an existing corporation, which had a franchise. The grant to the "assigns" of the corporation cannot be construed as extending to any assigns except one who should be the assignee of its franchise to establish and run a railroad. Nor did the mention of rights, members and appurtenances belonging and appertaining to the strip of land, or the use of the words "forever, in fee simple," enlarge what was otherwise the limited character of the grant. No fee in the land was conveyed, nor any estate which was capable of being sold on execution on a judgment at law, or separate from the franchise to make and own and run a railroad. The corporation could not have made a voluntary conveyance of the right of way, severed from its franchise. What it acquired was merely an easement in the land, to enable it to discharge its function of making and maintaining a public highway, the fee of the soil remaining in the grantor.

In *New Mexico* v. *United States Trust Co.* (1898), 172 U. S. 171, in holding that an exemp-

tion from taxation of a railroad right of way granted under Section 2 of the Act of July 27, 1866, c. 278 (14 Stat. 292, 294), operates to exempt from such taxation the land itself, the Court said (p. 183):

> But if it may not be insisted that the fee was granted, surely more than an ordinary easement was granted, one having the attributes of the fee, perpetuity, exclusive use and possession; also the remedies of the fee, and, like it, corporeal, not incorporeal property.

In *Northern Pacific Railway* v. *Townsend* (1903), 190 U. S. 267, 271, the Court, in construing the right of way granted under the Act of July 2, 1864 (13 Stat. 365), cited the *New Mexico Case,* and held the right of way to constitute a "limited fee made on an implied condition of reverter," and said:

> But, although there was a present grant, it was yet subject to conditions expressly stated in the act, and also (to quote the language of the *Baldwin* case) "to those necessarily implied, such as that the road shall be * * * used for the purposes designed." Manifestly, the land forming the right of way was not granted with the intent that it might be absolutely disposed of at the volition of the company. On the contrary, the grant was explicitly stated to be for a designated purpose, one which negated the existence of the power to volun-

> tarily alienate the right of way or any portion thereof. The substantial consideration inducing the grant was the perpetual use of the land for the legitimate purposes of the railroad, just as though the land had been conveyed in terms to have and to hold the same so long as it was used for the railroad right of way. In effect the grant was of a limited fee, made on an implied condition of reverter in the event that the company ceased to use or retain the land for the purpose for which it was granted.

In *Rio Grande Railway Company* v. *Stringham* (1915), 239 U. S. 44, 47, the Court, in considering the Act of March 3, 1875, c. 152 (18 Stat. 482), granting a railroad right of way, held:

> The right of way granted by this and similar acts is neither a mere easement, nor a fee simple absolute, but a limited fee, made on an implied condition of reverter in the event that the company ceases to use or retain the land for the purposes for which it is granted, and carries with it the incidents and remedies usually attending the fee.

And see cases therein cited.

Even if there be a doubt as to whether the road took a fee or a lesser interest in the land, such doubt should be resolved in favor of the Government and against the railroad.

In *United States* v. *Oregon and California Railroad Company* (1896), 164 U. S. 526, 539, the Court said:

The rule of construction applicable to the granting act is the familiar rule that all grants of this description must be construed favorably to the Government, and that nothing passes but what is conveyed in clear and explicit language.

See also Elliott on Railroads (2d Ed.), Sec. 938.

III.

The statute contains provisions for the operation of the right of way "with due regard for the rights of the Indians," and subject to rules and regulations of the Secretary of the Interior. Such provisions show that it was not the intent of Congress to extinguish completely the Indian title so as to remove from the Indians the protection of the Federal liquor laws.

The decision of the *Clairmont Case* is not to be extended to cases involving a different set of facts. In that case, it was admitted that in the land in question the Indian title was absolutely extinguished; and no facts appeared to show that Congress had retained any legislative power over the land; hence the Court very properly decided that said land was no longer "Indian country." It is clear, however, that the mere conveyance or cession of their land by the Indians, even though the cession be absolute and in fee, will not deprive Congress of its power to legislate for the Indians and will not relieve the land in question from the status of Indian country, if Congress at the time of the cession declares its intent to retain some form of control over such land for the benefit of the Indians. Such intent being shown, the land

remains "Indian country," or subject to Federal legislation. *Dick* v. *United States* (1908), 208 U. S. 340; *Perrin* v. *United States* (1914), 232 U. S. 478; *Johnson* v. *Gearlds* (1914), 234 U. S. 422.

The question in the case at bar, therefore, is first: has Congress shown by the provisions of the Act taken as a whole an intent not to extinguish wholly the Indian title; second, even if the Indian title has been extinguished in the sense that the Indians have granted or relinquished a fee, has Congress shown an intent to continue to subject the lands so granted or relinquished to the operation of the Federal liquor laws for the benefit of the Indians?

This Court has expressly stated that the limited fee which a railroad obtains by a grant of right of way is not so exclusive as not to be subject to limitations. As was said in *Northern Pacific Railway* v. *Townsend* (1903), 190 U. S. 267, 272, "other limitations in favor of the general public upon an exclusive right of occupancy by the railroad of its right of way might be imposed." This was said with relation to the State police power; but it is even more certain that Congress itself may retain a right to limit the exclusiveness of the railroad's occupancy.

The Government contends that the Indians in ceding the right of way in the case at bar, and Congress in passing the statute in question, never intended to divest the Indians wholly of their title

so as to deprive them of the protection of the Federal liquor laws.

The Government contends that the specific provisions in the statute as to construction and operation of the railway " with due respect to the rights of the Indians " and " subject to the rules and regulations of the Secretary of the Interior," who is the official guardian of the Indians, show that Congress did not intend such an extinguishment of the Indian title as would oust the operation of the Federal laws relative to sale and introduction of liquor in the Indian country. Congress clearly intended a limited conveyance of title which would continue the right of way for this purpose as " Indian country." " Due regard to the rights of the Indians " must certainly imply due regard to their primary right of protection against the insidiously destructive inroads on their health and property brought about by unregulated liquor traffic. The National Government has for years shown its anxiety to preserve to the Indian this form of protection. This Court has shown its desire to uphold this national policy—even to the extent of overruling a decision which was somewhat counter to previous decisions (see *United States* v. *Nice* (1916), 241 U. S. 591, and cases cited). The *Dick, Perrin,* and *Johnson* cases, cited *supra,* show also to what lengths this Court will go in extending Federal protection to Indians settled on lands on which Indian title has long been extinct.

As was said in *United States* v. *Forty-three Gallons of Whiskey* (1876), 93 U. S. 188, 195:

> As long as these Indians remain a distinct people, with an existing tribal organization, recognized by the political department of the Government, Congress has the power to say with whom, and on what terms, they shall deal, and what articles shall be contraband. If liquor is injurious to them inside of a reservation, it is equally so outside of it; and why cannot Congress forbid its introduction into a place near by, which they would be likely to frequent? It is easy to see that the love of liquor would tempt them to stray beyond their borders to obtain it; and that bad white men, knowing this, would carry on the traffic in adjoining localities, rather than venture upon forbidden ground.

In construing the statute in the case at bar, therefore, the fact of the existence of such a general policy must have considerable bearing in determining whether Congress intended to extinguish wholly the Indian title, or whether it intended to grant only a restricted title preserving to the Indians the right of protection which would be a necessary incident of such restricted title.

Is it probable that Congress in granting a right of way by this statute, straight through the Crow Indian Reservation, intended to remove from the status of "Indian country" a strip of land 150

feet wide through that Reservation and to establish that strip as land into which liquor could be freely introduced and in which it could be freely sold? Is it probable that Congress intended to remove all the safeguards from the Crow Indians to this extent? For if liquor can be freely sold at every station and at every other point on the right of way going through the Crow Indian Reservation, the enforcement of the Federal liquor laws over other parts of the Reservation will be futile, if not practically impossible. Was this the result intended by Congress, in granting a mere right of way?

The Government contends that such a construction should not be given to the statute, unless no other construction is possible. The intent of Congress as shown in the provisions of this statute in this case constitutes a marked contrast to the admitted complete extinction of title and lack of any evidence of retention of Federal legislative protection which were the determining features of the facts in the *Clairmont case.*

But even if the grant is to be considered as conveying from the Indians their whole title, the Government contends that the provisions of the statute bring the facts of their case within the purview of the *Dick, Perrin,* and *Johnson* cases, rather than within the category of the *Clairmont* case. For even if the whole title be conveyed or ceded by the Indians, their land will still remain " Indian country " or subject to Federal legislation,

if Congress at the time of the conveyance or cession shows its intent to retain the Federal control for the benefit of the Indians.

The Government contends, as argued *supra*, that such intent was clearly shown in the statute in question.

IV.

The statute contains provisions for forfeiture of the right of way under such conditions as plainly show that the Indians shall retain the right of reverter or that the land shall revert to the United States for the benefit of the Indians. This negatives the idea that the Indian title has been completely extinguished within the meaning of the decision in the Clairmont case.

Section 5 of the statute in question, which was as follows:

> That the said railroad company shall accept this right of way *upon the expressed condition*, binding upon itself, its successors and assigns, *that they will neither aid, advise, nor assist in any effort looking towards the changing or extinguishing the present tenure of the Indians in their land, and will not attempt to secure from the Indian tribes any further grant of land or its occupancy than is hereinbefore provided: Provided, That any violation of the condition mentioned in this section shall operate as a forfeiture of all the rights and privileges of said railroad company under this act,*

shows that the Indians had a right of reverter or that the land might revert to the United States

to be held in trust for the benefit of the Indians, in case of the breach of the specific condition. This was something more than the " implied condition of reverter in the event that the company ceased to use or retain the land for the purpose for which it was granted " referred to in *Northern Pacific Railway* v. *Townsend*, 190 U. S. 267, 270 (quoted *supra*).

This additional right of reverter made the grant of the right of way even more of a limited fee, and even less of an absolute extinction of title, than in the other right of way statutes construed in other cases in this Court; and removes the present case still further from the category of facts presented by the *Clairmont case*.

CONCLUSION.

It is respectfully submitted that the judgment of the United States District Court for the District of Montana should be reversed, and the defendants ordered to stand for trial in that court.

CHARLES WARREN,
Assistant Attorney General.

DECEMBER, 1917.

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UNITED STATES *v.* SOLDANA ET AL.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MONTANA.

No. 325. Argued March 4, 1918.—Decided April 15, 1918.

In view of restrictions and conditions for the protection of the Indians contained in the Acts of May 1, 1888, c. 213, 25 Stat. 113, and February 12, 1889, c. 134, 25 Stat. 660, the grant made by the latter to the Big Horn Southern Railroad Company of a right of way through the Crow Reservation, whether amounting to a mere easement, a limited fee, or some other limited interest, was not intended to extinguish the title of the Indians in the land comprised within such right of way; which, therefore, remains "Indian country" within the meaning of the Indian Liquor Act of January 30, 1897, c. 109, 29 Stat. 506.

Reversed.

THE case is stated in the opinion.

Mr. Assistant Attorney General Warren for the United States.

No appearance for defendants in error.

MR. JUSTICE BRANDEIS delivered the opinion of the court.

The Act of January 30, 1897, c. 109, 29 Stat. 506,[1] makes it a criminal offence to introduce intoxicating liquors "into the Indian country." For violating that law, Soldana and Herrera were indicted in the District Court of the United States for the District of Montana. The indictment

[1] This repealed, so far as it was inconsistent, the Act of July 23, 1892, c. 234, 27 Stat. 260, which amended Revised Statutes, § 2139, as amended by Act of February 27, 1877, c. 69, 19 Stat. 244.

charged that the liquor was introduced "within the exterior boundaries of the Crow Indian Reservation" in that State, but upon "the station platform of the Chicago, Burlington and Quincy Railway Company, at the town of Crow Agency" upon the right of way of said railroad. Defendants demurred, contending that the station platform was not within Indian country and that, therefore, no offence was alleged. The District Court sustained the demurrer and discharged the prisoners. The case came here under the Criminal Appeals Act of March 2, 1907, c. 2564, 34 Stat. 1246.

Crow Indian Reservation consists of nearly two and a half million acres located in the southwestern part of Montana. The Government agency is at Crow Agency which lies north of the middle of the reservation on the Chicago, Burlington and Quincy Railway, which runs through the heart of the reservation from north to south. The right of way is one hundred and fifty feet wide except where additional ground is allowed for stations. Whether or not the station platform is Indian country depends upon the construction to be given to the act of Congress granting the right of way. If the Indian title to the soil on which the platform stands was extinguished by that grant, the platform was not within Indian country. *Bates* v. *Clark*, 95 U. S. 204.[1] Did the statutes except from the reservation the land on which the railroad was built and extinguish the Indian title, or did they merely give to the company a right of way or other limited interest in the land on which to construct and operate a railroad?

[1] Other cases giving criteria for determining the meaning of "Indian country" are: *American Fur Co.* v. *United States*, 2 Pet. 358; *Ex parte Crow Dog*, 109 U. S. 556; *United States* v. *Le Bris*, 121 U. S. 278; *Dick* v. *United States*, 208 U. S. 340; *United States* v. *Celestine*, 215 U. S. 278; *Clairmont* v. *United States*, 225 U. S. 551; *Donnelly* v. *United States*, 228 U. S. 243; *United States* v. *Pelican*, 232 U. S. 442; *Pronovost* v. *United States*, 232 U. S. 487.

The statutes to be considered are Act of May 1, 1888, c. 213, 25 Stat. 113, confirming the establishment of the reservation and Act of February 12, 1889, c. 134, 25 Stat. 660, granting a right of way through the reservation to the Big Horn Southern Railroad. Whatever rights it acquired were transferred to the Burlington under Act of March 1, 1893, c. 192, 27 Stat. 529.

The Act of 1888 provided that whenever, in the opinion of the President, public interests require the construction of railroads through any portion of the reservation, the "right of way shall be, and is hereby, granted for such purposes, under such rules, regulations, limitations, and restrictions as the Secretary of the Interior may prescribe." The Act of 1889 provided, by § 3, that "the surveys, construction, and operation of such railroad shall be conducted with due regard for the rights of the Indians and in accordance with such rules and regulations as the Secretary of the Interior may make to carry out this provision." Section 5 declared that the grant of the right of way was upon the expressed condition that the grantee and its successors "will neither aid, advise, nor assist in any effort looking towards the changing or extinguishing the present tenure of the Indians in their land, and will not attempt to secure from the Indian tribes any further grant of land or its occupancy than is hereinbefore provided: *Provided*, That any violation of the condition mentioned in this section shall operate as a forfeiture of all the rights and privileges of said railroad company under this act."

Whether these acts should be held to have granted a mere easement or a limited fee or some other limited interest in the land, *New Mexico* v. *United States Trust Co.*, 172 U. S. 171; *Northern Pacific Ry. Co.* v. *Townsend*, 190 U. S. 267; *Rio Grande Western Ry. Co.* v. *Stringham*, 239 U. S. 44; it is clear that it was not the purpose of Congress to extinguish the title of the Indians in

the land comprised within the right of way. To have excepted this strip from the reservation would have divided it in two; and would have rendered it much more difficult, if not impossible, to afford that protection to the Indians which the provisions quoted were designed to ensure. The case of *Clairmont* v. *United States*, 225 U. S. 551, which is the basis of the decision in *United States* v. *Lindahl*, 221 Fed. Rep. 143, relied upon by the lower court, involved a statute which extinguished the Indian title.

The judgment of the District Court is

Reversed.